

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed January 11, 2008. At the time of the Office Action, Claims 1-8, 10-12, 14-20 and 23-24 were pending in this Application. Claims 1-8, 10-12, 14-20 and 23-24 were rejected. Claims 1, 4, and 12 have been amended. Claims 9, 13, 21-22 and 25 were previously cancelled. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §101

Claims 12, 14-20 and 24 were rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Although Applicant disagrees with the rejections under 35 U.S.C. §101, in order to advance prosecution, Applicant has amended independent Claim 12 to recite:

12. A computer readable medium storing a program of instructions, the program of instructions implementing a method for redundant array of independent disks (RAID) creation, the program of instructions operable to cause an information handling system to: ...
(emphasis added).

M.P.E.P. § 2106.01 states:

. . . When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). (emphasis added).

Claim 12 recites "A computer readable medium storing a program of instructions," which instructions perform the various functions recited in the body of the claim. Thus, according to the M.P.E.P., Claim 12 is statutory, as well as Claims 14-20 and 24 that depend from Claim 12. For at least these reasons, Applicant respectfully requests the Examiner withdraw the rejections under 35 U.S.C. §101, and allow Claim 12, 14-20, and 24.

Rejections under 35 U.S.C. §103

Claims 1-8, 10-12, 14-20 and 23-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,549,977 to Robert W. Horst et al. ("*Horst*") in view of U.S. Patent Application Publication No. 2002/0138670 to Richard H. Johnson ("*Johnson*") further in view of U.S. Patent Application Publication No. 2002/0188801 by Henry J. Green ("*Green*").

Applicant respectfully traverses. In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Horst, *Johnson*, and *Green*, whether considered alone or in combination, do not teach all elements of Applicant's claims. For example, amended Claim 1 recites in part:

if the particular intercepted I/O operation is identified as a write operation to a data portion of a disk RAID volume, **returning a success status to the requesting application without forwarding the write operation for processing or caching the write operation**, such that the write operation is neither completed nor written to disk; (emphasis added)

This recited concept -- returning a success status for a write operation without forwarding or caching the write operation -- is not disclosed by *Horst*, *Johnson*, or *Green*. The Examiner claims that *Horst* in view of *Johnson* teaches ***returning a success status*** for a write operation ***without forwarding*** the write operation for processing. In particular, the Examiner alleges that this feature is disclosed by *Horst* at Col. 1, line 20-33 (Office Action, page 3).

The Examiner then admits that *Horst* in view of *Johnson* does not teach ***returning a success status*** for a write operation ***without caching*** the write operation. (Office Action, page 5). But the Examiner then alleges that *Green* makes up for this deficiency at paragraph 0032. However, Applicant submits that Paragraph 0032 of *Green* does not teach *returning a success status* for a write operation *without caching* the write operation. Paragraph 0032 teaches:

[0032] As such, several caching levels may be disposed between the computer system 100' and the persistent memory system 120. Typically each write operation must be acknowledged and if a data write is lost or incomplete, the computer system may retransmit the write request. Acknowledgments from a caching systems can be performed to enhance performance since the persistent memory system is typically much slower than the caching system 110. As noted, acknowledgment of a write request 150 from the highest level sub-caching system 270-N offers better performance but less reliability in the case of a system or media failure. Acknowledgment of a write request 150 from a lower level sub-caching system 270-2 offers poorer performance but greater reliability. Acknowledgment of a write request 150 from the persistent memory system 120 offers the poorest performance but the highest reliability. Consequently, a tradeoff between performance and reliability is performed, preferably dynamically, in selecting the origin of the acknowledgment. (emphasis added)

Applicant acknowledges that the paragraph is ambiguous.

According to a first possible interpretation of Paragraph 0032, data write operations that are lost or incomplete are not acknowledged. The passage states that “each write operation must be acknowledged and if a data write is lost or incomplete, the computer system may retransmit the write request.” This suggests that a data write that is lost or incomplete must be retransmitted in order to be received by the caching system and acknowledged. There is no acknowledgement of lost or incomplete data writes that are not cached. Thus, paragraph 0032 cannot teach *returning an acknowledgement* (much less a “success status”) for a write operation *without caching* the write operation.

According to a second possible interpretation of Paragraph 0032, a data write operation may be lost or incomplete *after* being cached in the multi-level caching system (i.e., in either “the highest level sub-caching system 270-N” or “a lower level sub-caching system 270-2.”). Under such interpretation, it is unclear whether the “acknowledgement”

from the caching system is an acknowledgement of receipt of the data write operation at the caching system, or an acknowledgement that the data write operation was lost or incomplete. Either way, this cannot be interpreted as *returning a success status* for a write operation *without caching* the write operation.

In other words, if *Green's* "acknowledgement" is an acknowledgement of successful receipt of the data write operation at the caching system, then the data write operation is cached, so *Green* cannot teach "returning a success status to the requesting application without ... caching the write operation," as recited in amended Claim 1. Alternatively, if *Green's* "acknowledgement" is an acknowledgement that a data write operation was lost or incomplete, it is clearly not "a success status," as recited in amended Claim 1.

Thus, regardless of the interpretation of Paragraph 0032, it cannot be interpreted as teaching *returning a success status* for a write operation *without caching* the write operation. Therefore, none of *Horst*, *Johnson*, or *Green* teach "... returning a success status to the requesting application without ... caching the write operation, such that the write operation is neither completed nor written to disk," as recited in amended Claim 1.

For at least these reasons, amended Claim 1 is allowable over the proposed combination of *Horst*, *Johnson*, and *Green*. Thus, Applicants respectfully request reconsideration and allowance of amended Claim 1, as well as Claims 2-3 and 23 that depend from Claim 1. In addition, for analogous reasons, Applicants request reconsideration and allowance of amended independent Claims 4 and 12, as well as Claims 5-8, 10-12, 15-20, and 24 that depend therefrom.

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PATENT APPLICATION
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CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant Applicants authorize the Commissioner to charge \$130.00 for a One Month Extension to Deposit Account No. 50-2148 of Baker Botts L.L.P.

Applicant believes there are no other fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2689.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicant



Eric M. Grabski
Reg. No. 51,749

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SEND CORRESPONDENCE TO:
BAKER BOTTS L.L.P.
CUSTOMER ACCOUNT NO. **23640**
512.322.2689
512.322.8383 (fax)